



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 14, 2019 (the "Application"). The Landlord sought compensation for damage to the unit, to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant testified that she received the hearing package and Landlord's evidence from Tenant S.F. the week of the hearing. The Tenant did not take issue with proceeding with the hearing. The Agent testified that she received the Tenants' evidence the day before the hearing. The Agent did not take issue with proceeding with the hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the unit?
2. Is the Landlord entitled to recover unpaid rent?

3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought compensation as follows:

Item	Description	Amount
1	Cleaning	\$105.00
2	Blind cleaning	\$180.00
3	May rent	\$1870.00
4	May NSF fee x 2	\$50.00
	TOTAL	\$2,205.00

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 01, 2017 and was for a fixed term ending March 31, 2018 then became a month-to-month tenancy. The parties agreed rent at the end of the tenancy was \$1,870.00. Rent was due on or before the first day of each month. The Tenants paid a \$900.00 security deposit. Term 10 in the agreement states that returned or NSF cheques are subject to a fee of not more than \$25.00 each.

The Tenant testified that the Tenants vacated the rental unit April 30, 2019.

The Agent testified that the Landlord received the Tenants' forwarding address in writing on May 03, 2019. The Tenant testified that she thought the forwarding address was provided May 02, 2019.

The Tenant acknowledged that the Tenants agreed to the Landlord keeping \$285.00 of the security deposit as \$105.00 for cleaning and \$180.00 for blind cleaning.

The parties agreed on the following. A move-in inspection was done March 31, 2017. The unit was empty. A Condition Inspection Report (CIR) was completed and signed by both parties. The Agent testified that a copy of the CIR was given to the Tenants in person March 31, 2017. The Tenant testified that she does not recall this but it could have been.

The parties agreed on the following. A move-out inspection was done May 02, 2019. The unit was empty. A Condition Inspection Report (CIR) was completed and signed by both parties. A copy of the CIR was given to the Tenants in person May 02, 2019.

In relation to the claim for May rent and the NSF fees, the Agent testified as follows. The Tenants did not provide proper notice ending the tenancy until April 02, 2019, therefore the notice was effective May 31, 2019. The Tenants signed a form acknowledging that their notice ending the tenancy was late. The Tenants are responsible for May rent. The Tenants were aware that they were responsible for May rent if the unit was not re-rented prior to June. The Landlord showed the unit numerous times to prospective tenants but did not re-rent it until June 01, 2019.

The Agent further testified as follows. The Landlord processed May rent which was provided as a pre-authorized debit. This came back May 03, 2019 as "NSF". The Landlord tried to process the payment again May 06, 2019 but this also came back as "NSF".

The Tenant testified as follows. The Tenants confirmed March 31, 2019 that they were able to get a new place. The Tenants sent the Landlord an email March 31, 2019 ending the tenancy. They used email because they had no other way of connecting with the Landlord as it was a Sunday and the office was closed. The Tenants did not know the notice would be considered late. The following day, the Landlord told them the email was not sufficient and that they had to sign a form for the notice to be effective. She signed the form because the Landlord said there was no way around it. The Tenants were assured the unit would be rented prior to June. The Landlord did not show the rental unit for the first two weeks after receiving the notice.

The Landlord submitted the "Late Vacate Notice" signed by the Tenant April 02, 2019 ending the tenancy and acknowledging being responsible to pay May rent if the unit is not re-rented.

The Landlord submitted the form signed by the Tenant agreeing to \$285.00 being deducted from the security deposit. It includes the forwarding address and is dated May 03, 2019.

The Landlord submitted documentation showing the May rent payment was returned twice due to insufficient funds.

Analysis

In relation to the security deposit, under sections 24 and 36 of the *Residential Tenancy Act* (the “*Act*”), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Given the testimony of the parties, there is no issue that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment relates to claims for damage and the Landlord has claimed for unpaid rent.

I am not satisfied the Tenants vacated the rental unit April 30, 2019 given an email in evidence from the Tenant May 01, 2019 stating that the keys were left in the rental unit. I find that, for the purposes of section 38(1) of the *Act*, the tenancy ended May 01, 2019 once the Tenants vacated the rental unit. Based on the form submitted, I find the Tenants provided their forwarding address May 03, 2019. The Landlord had 15 days from May 03, 2019 to repay the security deposit or claim against it. The Application was filed May 14, 2019, within the time limit for doing so. The Landlord has complied with section 38 of the *Act*.

In relation to the claim for cleaning, the Landlord is entitled to \$105.00 for cleaning and \$180.00 for blind cleaning as the Tenants agreed to this.

In relation to May rent, section 45 of the *Act* deals with tenants’ notice ending a tenancy and states:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement...

(4) A notice to end a tenancy given under this section must comply with section 52...

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice...

[emphasis added]

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section...

The requirement for written notice and the timing of notice is also set out in term 33 of the tenancy agreement.

The March 31, 2019 email sent by the Tenants did not comply with section 52 of the *Act* as it was not in writing, as that term is used in the *Act*, and not signed by the Tenants. Therefore, it was not an effective notice under sections 45 and 52 of the *Act*. The Landlord was entitled to require the Tenants to provide proper notice that did comply with sections 45 and 52 of the *Act*. The Tenants did not have to sign the "Late Vacate Notice" but were required to provide written notice that complied with section 52 of the *Act*. I find the Tenants did so April 02, 2019 when they signed the "Late Vacate Notice".

Pursuant to sections 45 and 53 of the *Act*, the notice provided on April 02, 2019 was not effective until May 31, 2019. The Tenants were responsible to pay rent up until the

effective date of the notice. I accept that the Landlord did not re-rent the unit until June as I did not understand the Tenant to dispute this. The Tenant testified that the Landlord did not show the unit for the first two weeks after receiving the notice. I do not find that the Landlord failed to mitigate their loss because of this. I find the Landlord is entitled to recover May rent.

In relation to the NSF fees, I am not satisfied the Landlord is entitled to this. Although the Tenants were responsible for paying May rent if the unit was not re-rented, I do not accept that the Landlord was entitled to process the pre-authorized debit for May on May 01, 2019 when the Tenants vacated on this date. The Landlord should have at least had a discussion with the Tenants about this prior to processing the pre-authorized debit which may have avoided the NSF fees. I find the Landlord certainly should have done so prior to trying to process the payment again May 06, 2019. In the circumstances, I am not satisfied the Landlord is entitled to reimbursement for the NSF fees.

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Cleaning	\$105.00
2	Blind cleaning	\$180.00
3	May rent	\$1870.00
4	May NSF fee x 2	-
	TOTAL	\$2,155.00

Given the Landlord was successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$2,255.00 in compensation. The Landlord is permitted to keep the \$900.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a further Monetary Order for \$1,355.00.

Conclusion

The Landlord is entitled to compensation in the amount of \$2,255.00. The Landlord is permitted to keep the security deposit. The Landlord is issued a further Monetary Order for \$1,355.00. This Order must be served on the Tenants. If the Tenants fail to comply

with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 28, 2019

Residential Tenancy Branch